

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LEONARD ALLEN McCORD,)	
)	
Petitioner,)	
)	
vs.)	Case number 4:09cv0428 TCM
)	
DAVE DORMIRE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Leonard Allen McCord, for the appointment of counsel.

Petitioner seeks habeas relief from his conviction for first degree involuntary manslaughter and armed criminal action, arguing that (1) his due process rights were violated when evidence of prior bad acts were admitted; (2) the evidence established that he acted in self-defense and was insufficient to convict him; and (3) his trial and appellate counsel were ineffective. Respondent has recently been ordered to show cause why Petitioner should not be granted the relief he seeks.

There is no constitutional or statutory right to appointment of counsel in habeas corpus proceedings, see **Morris v. Dormire**, 217 F.3d 556, 558 (8th Cir. 2000); "instead, [the appointment of counsel] is committed to the discretion of the trial court," **McCall v. Benson**, 114 F.3d 754, 756 (8th Cir. 1997). In considering whether to appoint counsel, the factual and legal complexity of the case and the petitioner's ability to investigate and articulate his claims should be considered. **Morris**, 217 F.3d at 558-59; **McCall**, 114 F.3d at 756; **Nachtigall v. Class**, 48 F.3d 1076, 1081-82 (8th Cir. 1995). Counsel must be

appointed, however, if an evidentiary hearing is to be held. See Rule 8(c), Rules Governing Section 2254 Cases in the United States District Courts (mandating that counsel be appointed if an evidentiary hearing is to be held); accord Armstrong v. Kemna, 534 F.3d 857, 868 n.5 (8th Cir. 2008).

At this early stage in the proceedings, the issues articulately raised in the petition appear to be neither factually nor legally complex and to be capable of being resolved without an evidentiary hearing. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for appointment of counsel is **DENIED**. [Doc. 3]

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 4th day of May 2009.